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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE DANNY HUERTA,

Defendant and Appellant.

F056624

(Super. Ct. No. F07908202)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Mary D. Dolas, Commissioner.

Matthew D. Roberts, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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* Before Cornell, Acting, P.J., Gomes, J., and Dawson, J.

On October 23, 2007, appellant, Joe Danny Huerta, was arrested after he was found in possession of .58 grams of methamphetamine. On October 24, 2007, the district attorney filed a complaint charging Huerta with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), and two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).

On October 25, 2007, Huerta pled guilty to possession of methamphetamine in exchange for being placed on Proposition 36 probation and the dismissal of the remaining count and enhancements. The court then placed Huerta on Proposition 36 probation as per his plea agreement.

On December 5, 2007, defense counsel told the court Huerta wanted to withdraw his plea but that a test of the drugs seized from him would be dispositive of the motion. The court ordered the drugs tested and scheduled a hearing on the motion for January 9, 2008.

On February 5, 2008, the court heard and denied Huerta's *Marsden*¹ motion. During the *Marsden* hearing, defense counsel advised the court that Huerta's motion to withdraw plea had been withdrawn because the drugs seized from Huerta had conclusively tested positive for methamphetamine.

On February 21, 2008, the court found that Huerta violated his probation after Huerta admitted that he failed to enroll in drug treatment program and participate in drug testing. The court then revoked and reinstated probation.

On June 24, 2008, the court found that Huerta violated his probation after Huerta admitted that he failed to participate in weekly drug testing and had been terminated from his drug treatment program for poor attendance. The court then revoked and reinstated Huerta's probation.

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

On October 30, 2008, the court found Huerta violated his probation based on his admission that he failed to enroll in a drug program, report to the probation officer, and participate in drug testing.

On November 13, 2008, the court terminated Huerta's Proposition 36 probation, placed him on regular probation, and ordered him to serve 240 days in local custody.

Huerta's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Huerta has not responded to this court's invitation to submit additional briefing.

Following independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.